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IN THE SUPREME COURT OF THE UNITED STATES

No. 263

MURDOCK HINTON, *Appellant*

vs.

STATE OF MISSISSIPPI, *Appellee*

BRIEF OF THE STATE OF MISSISSIPPI FOR THE APPELLEE

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IN THE SUPREME COURT OF THE UNITED STATES

No._____

MURDOCK HINTON, *Appellant*

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POINTS DISCUSSED IN BRIEF OF APPELLEE

1. Where the record does not contain all the evidence in the case, points in stipulation is interpreted in the light of the State Supreme Court's decision.

2. In a murder case where objection is not made at the time the evidence was offered, court will not reverse and if objection comes too late on the motion to exclude evidence although the evidence might have been inadmissible had objections been made.

3. Stipulation between counsel setting forth substance of the evidence for the State before the State Supreme Court is not controlling, the opinion of the court affirming the case submerges the counsel's statement in his original

brief and the stipulation is controlled by the opinion of the court contrary thereto.

4. Appellant in this court cannot complain of instructions given or refused where the full evidence in the case is not in the record. The instructions being presumed to be correct applied to the entire evidence.

IN THE SUPREME COURT OF THE UNITED STATES

No. _____

MURDOCK HINTON, *Appellant*

vs.

STATE OF MISSISSIPPI, *Appellee*

BRIEF OF THE STATE OF MISSISSIPPI FOR THE APPELLEE

I respectfully submit that the court should not entertain an appeal from the judgment of the Supreme Court of Mississippi. The said appeal should be denied and the proceeding dismissed.

The full record of the Supreme Court of Mississippi is not before this court but only certain parts of the record in the trial court and in the Supreme Court of Mississippi is now before this court.

Number One

The assignments of error in the United States Supreme Court appear in the typewritten record at pages 116 to 123, and should be considered in the light of the Mississippi Supreme Court's decision as stated in its opinion, for the major part of the testimony is not contained in this record,

and also in considering the stipulations of counsel, should be considered in the light of the Mississippi Supr Court's opinions which contain a statement of the cas facts as well as on the law. Neither counsel in the can dispute the court's statement of the case except by record itself and much of the record of the testimon the trial court is omitted, which, of course, was consid by the jury in finding its verdict of guilty of murder.

The stipulations referred to are contained in the re beginning on page 6 and extending to page 9 thereof. the first stipulation, it is stipulated that there was suffic evidence in the trial court to convict of the crime of m der except for matters set forth therein that the Appell who murdered Nelson, admitted to the officers who arre him that he, Hinton, shot and killed the deceased Sher J. E. Nelson, and that it is not necessary to incorporate proof as shown by the record at the trial in this record appeal. This stipulation must be construed in the light c case as stated in the opinion of the Supreme Court of M sissippi, rendered on April 10, 1950 and reported in 45 (2nd Series), page 805 to page 809 and was set out in t record at pages 61 to 71, inclusive and in the opinion suggestion of error in this Mississippi Supreme Court pages 73 to 81 and pages 82 and 83 of the record, whi opinion on suggestion of error is also reported in 46 So. (2 Series), pages 445 and 446.

The Appellant was indicted for the murder of one N son, Sheriff of George County, Mississippi, and on volumi ous evidence was convicted of murder and sentenced to t death penalty of electrocution in Mississippi. I constru the stipulation to mean that the evidence on the trial in th trial court was sufficient to justify the verdict of the jur and unless the errors complained of in this record concern ing Mrs. Mattie Peterson's testimony (R. pgs. 10-11), pa

of the testimony of Mrs. Elma Yawn (R. pgs. 12-13), and part of the testimony of Mrs. Zudie Richardson (R. pg. 14), would, in spite of the overwhelming testimony, cause a reversal of the case purely because of the error so called in permitting them to testify that one of the occupations by which the Appellant made money was by making whiskey, or selling whiskey. This testimony, when admitted, was not objected to at the time it was admitted and objection came too late and cannot now be availed of.

It was stipulated that the Appellant, Murdock Hinton, admitted to the officers who arrested him that he, Hinton, shot and killed the deceased Sheriff, J. E. Nelson, without stipulating the circumstances shown in the record to establish that fact. The killing when not explained would be murder and the opinion of the Supreme Court, which is a part of this record, shows sufficient facts and circumstances to establish the fact independent of any presumption of law.

The stipulation also shows certain witnesses named therein, testified to the good character of the deceased, Nelson, for morals and virtue. Other witnesses named in the stipulation testified to the general reputation of the deceased Sheriff for morality and virtue, which testimony is referred to and explains and approved by the Supreme Court of Mississippi in its opinion referred affirming the case with the death penalty affixed and the date for which the final execution of the death penalty would be carried out.

I respectfully submit that the stipulations mentioned in this record are to be interpreted and given force in the light of the opinion of the Supreme Court, which opinion constitutes the law of the State bearing on the trial of the case and holding that the trial affirming the verdict of the jury was legal and fair and that no cause for reversal existed under the laws of this State. The testimony of the character witnesses mentioned and set forth in the stipula-

tion were in answer to a statement made by the Appellant's witnesses that he claimed to have been told that the deceased Sheriff, Nelson, was the father of an illegitimate child of Appellant's daughter, born to said daughter only a few weeks prior to the killing and that the Appellant had been told that the deceased who was the author of the degradation of Appellant's daughter was Nelson, which was at most mere hearsay evidence being admitted in evidence and the Sheriff being dead and unable to personally deny said charge, his general reputation for morality and virtue was admissible, as held by the Supreme Court of Mississippi, to refute this evidence and the opinion of the Supreme Court of Mississippi, which is part of this record, held that this was permissible under the law of the State. Whether the Appellant had heard that the deceased was the father of Appellant's daughter's child was admissible strictly on technical grounds is immaterial, for the rule is that when evidence is admitted without objection, it is competent for whatever it is worth on the issues in the trial. See Carter v. Graves, 6 Howard (Miss.) 9. If it was conceded as a fact that the Sheriff was the father of the illegitimate child of Appellant's daughter, it would be no justification under the law for the killing for it has never been the law in Mississippi that such fact would justify a killing or would reduce the killing from murder to manslaughter. The Appellant having procured the testimony that he had been so informed invited an answer to the testimony even if it was inadmissible on timely objection. Ransom v. State, 149 Miss. 262, 115 So. 208; Wagner v. Ellis, 85 Miss. 422, 37 So. 959; Y. & M. V. RR. Co. v. Lee, 148 Miss. 809, 114 So. 866.

The fact that J. E. Nelson was Sheriff of this County at the time he was killed would imply that he was a person of good character and standing in his County (Wherry v. Latimer, 103 Miss. 524, 60 So. 642, 6 Miss. Digest, "Evidence Key No. 60"), for as all courts know, public officials duly elected by the people are rated as men of good character, but whether that be true or not, the admission of this evi-

dence of good character for morality and virtue under the facts of this case would be harmless error and the holding of the State Supreme Court that it was not reversible by error under the laws of this State establishes that it was properly admitted as evidence in the case and it does not, in any way, violate the due process of law under the Fourteenth Amendment to the Federal Constitution.

The fourth stipulation sets forth a statement from the brief of the Assistant Attorney General of Mississippi before the Supreme Court of Mississippi and was stipulated to go into the record not as an admission of error but to prevent the copying into the record of the entire brief to save expense. This statement and opinion expressed in the said brief is not binding and was not binding on the Supreme Court of Mississippi, whose judgment as to the law of the case, is binding on the Attorney General of the State as it is binding on all other persons in the State and the statement in the said brief was a manifestation of the desire of the Attorney for the State on said appeal to accord to the Appellant his full legal rights and the manifestation of a disposition to be fair to the Defendant in the Defendant's rights and to secure a fair trial in an atmosphere of judicial calm. The stipulation setting forth said statements in the said brief was not a confession of error but said Attorney insisted that it was not a reversible error and that the evidence of guilt was so overwhelming that the Court would not reverse the conviction even if it had held that the matter was not admissible properly in the trial. The views of the Assistant Attorney General were submerged by the decision of the court and the decision of the court constituting the law of the State in reference thereto is the controlling matter as to the law of the State.

The stipulation setting forth parts of the Assistant Attorney General's argument is also controlled by the decision of the court that the evidence was so overwhelming

of the guilt of the Appellant that no reversal could be had on the record before the Supreme Court of Mississippi. This Court will not differ from the decision as to the law of Mississippi expressed by the State Supreme Court. The law of the State is binding on this Court unless the announcement violates the provisions of the United States Constitution and it is my understanding that the states have a large measure of control over what evidence may be admitted and considered by the trial courts on questions of guilt or innocence.

I do not desire to enlarge upon this matter but I do want the Court to understand that I do not consider the matter complained of a reversible error whether in Mississippi Supreme Court or in this Court reviewing the case in the United States Supreme Court.

The Appellant also complains of certain instructions given for the State in the trial court set forth in this record on pages 37 to 39. I submit that these instructions are correct as applied to the evidence in the trial court, but I submit that this Court has no power to review the instructions unless the record here contain all the evidence in the trial court for the instructions are presumed to be correct guides to the jury as to the applicable law and no court can reverse for the giving of an instruction unless it has the evidence before the trial court and the jury before the reviewing court so that it may see whether the instruction was applicable to the evidence. Dyson v. State, 26 Miss. (14 Cushman) 362; National Casualty Co., et al v. Hallem, 163 Miss. 164, 138 So. 572. The instruction given for the Defendant appears in this record (pgs. 40-47), but as the evidence is not before the Court, it cannot pass upon the correctness of the instructions as applied to the evidence because they do not have the evidence before them and because the law presumes in the absence of a showing by the evidence that the jury were not misdirected, the presumption

being that the instructions are correct. See cases cited in Miss. Digest, title "Evidence Key No. 83". The instruction that was refused for the Defendant appearing on page 48 was properly refused, the judgment of the State Court being presumptively correct in the absence of the full evidence in the case. I, therefore, submit with confidence that the judgment of the Supreme Court of Mississippi affirming the conviction of the Appellant and in overruling the suggestion of error was correct and in this regard on the suggestion of error, it appears from the opinion of the Chief Justice of the Mississippi Court concurred in by the other Judges unanimously, show that the case on suggestion of error was carefully considered in all respects after due deliberation on the suggestion of error and its prior opinion that it had correctly decided the case.

Respectfully submitted,

JOHN W. KYLE, Attorney General
By GEORGE H. ETHRIDGE
Assistant Attorney General

CERTIFICATE

I, George H. Ethridge, Assistant Attorney General of the State of Mississippi, hereby certify that I have this day mailed, postage prepaid, to the Hon. Bidwell Adam, Attorney for Defendant, at his Postoffice address in Gulfport, Mississippi; Hon. O. L. McLeod, Attorney for Defendant, at his Postoffice address in Pascagoula, Mississippi, and the Hon. Weaver E. Gore, Attorney for Defendant, at his Postoffice address in Jackson, Mississippi, each, a true copy of the foregoing brief.

WITNESS my signature this the 30th day of August, 1950.

GEORGE H. ETHRIDGE
Assistant Attorney General

No. 263. HINTON *v.* MISSISSIPPI. Appeal from the Supreme Court of Mississippi. *Per Curiam:* The appeal is dismissed for want of jurisdiction. 28 U. S. C. § 1257 (2). Treating the papers whereon the appeal was allowed as a petition for writ of certiorari as required by 28 U. S. C. § 2103, certiorari is denied. *Weaver Gore* for appellant. *John W. Kyle*, Attorney General of Missis-

sippi, and *George H. Ethridge*, Assistant Attorney General, for appellee. Reported below: 209 Miss. 608, 46 So. 2d 445.